FILED
021575 APR 25 2003

No. _____

# In The Supreme Court of the United States

**GEORGIA ANNE SNYDER-FALKINHAM, ET AL.,**
*Petitioners,*

**v.**

**BRUCE C. STOCKBURGER, ET AL.,**
*Respondents.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## PETITION FOR WRIT OF CERTIORARI

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108 pp

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the lower courts erred in applying a heightened pleading standard for a plaintiff alleging a conspiracy under 42 U.S.C. § 1983 and a corresponding heightened due diligence standard under Fed. R. Civ. P. 11.

2. Whether the federal courts have jurisdiction to hear cases alleging a conspiracy to deny an individual the right to a fair and impartial state tribunal.

3. Whether Fed. R. Civ. P. 11 allows the imposition of sanctions where the evidence supporting the complaint is never challenged by any party and where the imposition of sanctions would have a chilling effect on civil rights litigation.

## PARTIES TO THE PROCEEDINGS

Petitioners: Georgia Anne Snyder-Falkinham and one of her co-counsels, Joseph L. Anthony

Respondents: Bruce C. Stockburger; Gentry, Locke, Rakes & Moore; S. D. Roberts Moore; William R. Rakes; James R. Austin; Charles L. Williams, Jr.; Eugene E. Derryberry; William J. Creech, Jr.; James C. Joyce, Jr.; Linda Davis Frith; W. David Paxton; W. William Gust; Guy M. Harbert, III; David G. Weaver; Frank B. Miller, III; Sands, Anderson, Marks & Miller, P.C.; Wharton, Aldhizer & Weaver; Charlotte M. Hodges, Executrix of the Estate of Ronald D. Hodges, decease

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## OPINIONS AND ORDERS BELOW

The unpublished ruling of the United States Court of Appeals for the Fourth Circuit, inter alia, affirming the District Court's opinions and orders was issued on December 18, 2002, and is set out in the Appendix at A-1. The unpublished rulings of the United States Court of Appeals for the Fourth Circuit denying rehearing and rehearing en banc was issued on January 29, 2003, and are set out in the Appendix at A-45 and A-47. The unpublished Memorandum Opinion of the Federal District Court for the Western District of Virginia dismissing the suit and finding that sanctions should be imposed was filed on August 5, 1996, and is set out in the Appendix at A-5. The Order and Judgment of the District Court for the Western District of Virginia dismissing Petitioner's case was filed on June 7, 2002, and is set out in the Appendix at A-25. The Orders of the District Court for the Western District of Virginia determining the amount of sanctions and attorneys' fees were decided on June 7, 2002, and those Orders are set out in the Appendix at A-28 and A-40.

## STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The ruling of the United States Court of Appeals for the Fourth Circuit affirming the District Court's opinions and orders was issued on December 18, 2002; the rulings of the United States Court of Appeals for the Fourth Circuit denying rehearing and rehearing en banc were issued on January 29, 2003; and, thus, this Petition is timely pursuant to Sup. Ct. R. 13.3.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> nor (shall any person) be deprived of life, liberty, or property, without due process of law[.]

The Fourteenth Amendment states in pertinent part:

> nor shall any State deprive any person of life, liberty, or property, without due process of law[.]

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not

be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## STATEMENT OF THE CASE

The petitioner, Georgia Anne Snyder-Falkinham ("Petitioner"), filed this action to vindicate her constitutional rights, after a reasonable investigation revealed that justices of the Supreme Court of Virginia may have been influenced by improper ex parte communications made during the course of an action in which the Petitioner was a party. The Petitioner and/or her counsel received several anonymous calls and a letter (with the letter purporting to be from the wife of a member of one of opposing counsels' firms) which indicated that numerous ex parte communications had taken place, and that those communications influenced the outcome of the Petitioner's prior action.

Counsel for the Petitioner also received a printed note from an anonymous source and a portion of the letter addressed to the justices of the Virginia Supreme Court. (Transcript of Motion Hearing before the Hon. William L. Osteen, Sr., dated September 23, 1996 [September Motion Hearing Tr., herein], Plaintiff's Exhibit 8.) The note urged counsel for the Petitioner to obtain from the court a copy of the entire letter, which he or she stated was discussed by the justices and was in the

possession of the court. (September Motion Hearing Tr. at 32; Plaintiff's Exhibits 8 and 9.)

The court refused to provide a copy of the letter, stating that it was confidential. (September Motion Hearing Tr. at 23-43; Plaintiff's Exhibit 9 at ¶ 7). An official of the court stated that one 'copy' of the letter was in the office of one of the justices. It was later revealed that the justices had in fact received the letter, and that they had a "vague recollection" of the letter almost one year after it was purportedly sent. The clerk of the court stated, however, that the "members threw their copies in the waste basket." (September Motion Hearing Tr. at 64; Plaintiff's Exhibit 18.) These admissions by the court confirmed the facts disclosed by the anonymous source that the letter had been received, had made an impact upon some of the justices, and was still in existence at the time of the Petitioner's initial request.

At the time the portion of the letter had been revealed to counsel for the Petitioner, the anonymous source stated that he or she would provide the entire letter only if the court refused to produce it. (September Motion Hearing Tr. at 68; Plaintiff's Exhibit 19.) The source told counsel for the Petitioner, "Oh, I will know" if the court does not produce the letter. (September Motion Hearing Tr. at 69; Plaintiff's Exhibit 19.) In an attempt to prompt the source to produce the entire letter, counsel wrote to the court in an attempt to get the source to produce the entire letter to the Petitioner. The court did not produce the letter. Thereafter, a copy of the entire letter was taped to the office door of the Petitioner. (September Motion Hearing Tr. at 53, 174-76.)

Counsel for the Petitioner met with opposing counsel to determine if there was any evidence which would cast doubt on the authenticity of the letter or the facts asserted in the letter. (September Motion Hearing Tr. at 195-202; Plaintiff's Exhibits 22 [letter dated 3/20/96 from Petitioner's counsel to Howell] and 23.) Opposing counsel refused to deny the authenticity of the letter and refused to provide any evidence that would tend to undermine the reliability of the information contained in the letter. (September Motion Hearing Tr. at 195-202; Plaintiff's Exhibits 22 and 23.)

Further investigation by the Petitioner and her counsels revealed that there were numerous contacts between opposing counsel and certain justices during the relevant time period, thus making it possible that the ex parte contacts alleged in the letter and phone calls could have occurred. (September Motion Hearing Tr. at 49-56.)

Counsels for the Petitioner conducted a thorough investigation to determine if there was any evidence that the letter, its contents, and the other information received from the anonymous source were false. Counsels were unable to obtain any such evidence. The Petitioner denied having anything to do with the letter. (September Motion Hearing Tr. at 175-76.) Although all counsels for the Petitioner denied any involvement with the writing of the letter, counsels for Defendants refused to provide such a denial or any other information which would have allowed counsels for the Petitioner to make a reasonable judgment that the letter or the information it contained was false.

It was only after this extended investigation that the Petitioner and her counsels determined that there was a reasonable basis for concluding that the Petitioner's constitutional rights had been violated. Based on this investigation, the action in this case was filed with the federal District Court for the Western District of Virginia. The jurisdiction of the court was invoked pursuant to 42 U.S.C. § 1983 and the court's supplemental jurisdiction.

The Defendants (Respondents herein) filed Motions to Dismiss, and a hearing was set on those Motions. Without notice to counsels for the Petitioner, the hearing was converted into a sanctions hearing wherein the court twice specifically identified that it was applying a "heightened pleading **rule**" to this case. (A-62.) Counsels for the Petitioner were not permitted to give evidence or to call witnesses. The court issued a Memorandum Opinion stating that the Petitioner's claims should be dismissed for lack of jurisdiction, and that sanctions should be imposed. The court, however, did not issue an accompanying order.

Instead, an order was issued transferring the case to another district court judge. This judge held a hearing on September 23, 1996. The substitute judge stated in an Order and during the hearing that his authority was limited to establishing the amount of sanctions and that the issue of whether sanctions should be awarded had already been determined. (A-23-24; September Motions Hearing at 9.) For almost six years after the hearing (without any proceeding), no order was issued by the court. On June 7, 2002, the court issued orders finally dismissing the case and awarding sanctions. (A-25-44.) The orders entered in June of 2002 contained findings of

fact which were not in the record. On appeal, the Fourth Circuit noted the lengthy and unexplained delay, but found that it could not ascertain any harm. (A-4.) In an unpublished, per curiam opinion, the Fourth Circuit affirmed the orders of the District Court and adopted the reasoning of that court. (A-1-4.)

## REASONS FOR GRANTING THE WRIT

### I. THIS CASE PRESENTS THE COURT WITH THE OPPORTUNITY TO RECONCILE HOLDINGS OF THE FEDERAL COURTS OF APPEALS THAT ARE IN CONFLICT WITH EACH OTHER AND WITH THE HOLDINGS OF THIS COURT.

In their memoranda in support of their Motions to Dismiss, the Defendants argued that "heightened pleading requirements" and/or "standards" applied to a case alleging a conspiracy under § 1983. (Memorandum by Defendants Miller, et al., at 17; Memorandum by Defendants Stockburger, et al., at 13.) The District Court applied this heightened pleading standard (A-62; Transcript of the Motions Hearing before the Hon. Samuel G. Wilson on May 6, 1996) in reaching the conclusion that the Petitioner's Complaint contained "frivolous legal contentions and the lack of factual support." (A-12.)

The District Court specifically considered whether the Petitioner had made a "particular (factual) allegation under the heightened pleading **rule**." (A-62.) When counsel for the Petitioner stated that he thought that

notice pleading applied in federal court, the judge stated as follows: "You have a heightened pleading **rule** here." (A-62.)

In its opinion decided on December 18, 2002, the Fourth Circuit Court of Appeals stated that "we affirm on the reasoning of the district court." (A-4.) In support of applying a heightened pleading standard, Defendants Miller, et al., had relied, inter alia, on *Polur v. Raffe*, 912 F.2d 52, 56 (2d Cir. 1990). The Seventh Circuit Court of Appeals has recognized that *Polur*, and other cases like it, were abrogated by this Court in *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 122 S. Ct. 992, 997 (2002). *Walker v. Thompson*, 288 F.3d 1005, 1008 (7th Cir. 2002) (stating that *Polur* and other cases "which say that 'conclusory allegations' of conspiracy, or allegations that fail to mention an overt act, are not enough to withstand a motion to dismiss cannot be squared with either *Swierkiewicz* or our recent decisions").

The Fourth Circuit Court of Appeals has recently applied a heightened pleading standard in other cases, stating that the Supreme Court's holding in *Swierkiewicz* did not alter the basic pleading requirements in the Fourth Circuit. *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002). In *Dickson*, the majority upheld the dismissal of the plaintiff's claims under the prevailing pleading standard in the Fourth Circuit. In his dissent, Justice Gregory stated as follows:

> The majority next finds that Gravity has failed to allege "facts which, if proven true, would establish that the two conspiracies separately imposed unreasonable restraints

of trade in interstate commerce." *Ante*, at 205. Even if I agreed that there were two conspiracies and not one alleged in this case, there is no question that Gravity's pleadings are more than adequate.

The majority requires far more from Gravity than is appropriate under notice pleading standards. Aside from a statement of jurisdiction and a demand for relief, Federal Rule of Civil Procedure 8(a) requires nothing more than "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" 534 U.S. 506, 122 S.Ct. 992, 997, 152 L.Ed.2d 1.

The majority's pleading standard conflicts with the Supreme Court's recent pronouncement on federal pleading requirements. "[U]nder a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case." *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 122 S.Ct. 992, 997, 152 L.Ed.2d 1 (2002). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Id.* at 998. "Rule 8(a)'s simplified pleading standard applies to all civil actions, with certain exceptions." *Id.* Thus, the Supreme Court has made crystal clear, just this past term, that an evidentiary standard does not determine

> the adequacy of a complaint. *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 122 S.Ct. 992, 997, 152 L.Ed.2d 1 (2002). It is inappropriate, therefore, to require plaintiffs to plead facts going to that evidentiary standard in a complaint.

309 F.3d at 218 (GREGORY, Circuit Judge, dissenting). Thus, the Fourth Circuit Court of Appeals continues to apply a heightened pleading standard in contravention of *Swierkiewicz*.

Not only did the court apply this "heightened pleading standard" to the Petitioner's Complaint; the court also used this heightened pleading standard to assess whether Rule 11 sanctions were appropriate. As this Court has previously held, however, such an approach is not permissible under the Federal Rules:

> To establish municipal liability under § 1983, respondents argue, a plaintiff must do more than plead a single instance of misconduct. This requirement, respondents insist, is consistent with a plaintiff's Rule 11 obligation to make a reasonable prefiling inquiry into the facts.
>
> But examination of the Fifth Circuit's decision in this case makes it quite evident that the "heightened pleading standard" is just what it purports to be: a more demanding rule for pleading a complaint under § 1983 than for pleading other kinds of claims for relief.

*Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 167-67, 113 S. Ct. 1160, 162-63 (1993) (holding that neither Rule 11 nor Rule 9(b) allowed a heightened pleading standard with respect to allegations of municipal liability under § 1983).

When a court applies an erroneous legal standard in determining whether Rule 11 sanctions are warranted, the court has committed reversible error. As this Court has stated:

> [T]his standard would not preclude the appellate court's correction of a district court's legal errors, e.g., . . . relying on a materially incorrect view of the relevant law in determining that a pleading was not "warranted by existing law or a good faith argument" for changing the law. An appellate court would be justified in concluding that, in making such errors, the district court abused its discretion.

*Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402, 110 S. Ct. 2447, 2459 (1990).

The ruling of the Fourth Circuit Court of Appeals is, therefore, in conflict with the ruling of the Seventh Circuit Court of Appeals in *Walker*. Applying the holding of the Seventh Circuit Court of Appeals, the Fourth Circuit's decision in this case is also in conflict with this Court's decision in *Swierkiewicz*. The Petitioner urges this Court to resolve this conflict and to vacate the decision of the Fourth Circuit Court of Appeals which dismissed the

Complaint and awarded sanctions based on an erroneous view of the law.

## II. THIS CASE DEPRIVES FEDERAL COURTS OF JURISDICTION OVER CLAIMS TRADITIONALLY RECOGNIZED BY THIS COURT AS WITHIN THE JURISDICTION OF FEDERAL COURTS AND CREATES AN OVERLY BROAD INTERPRETATION OF THE ROOKER-FELDMAN DOCTRINE, WHICH IS IN CONFLICT WITH OTHER COURTS OF APPEALS.

The District Court ruled that it did not have jurisdiction over the Petitioner's constitutional claims. Specifically, the District Court ruled that the allegation of a conspiracy between state judges and private lawyers to influence the outcome of a state court decision was barred by this Court's decisions in *D. C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

In *Dennis v. Sparks*, 449 U.S. 24, 28 (1980), however, this Court held that a cause of action could be brought under 42 U.S.C. § 1983 alleging that private parties conspired with members of the judiciary. As the Eleventh Circuit Court of Appeals has held, the act in question, which is stated to be the basis of the denial of the protected right, may be performed by the judge, and this will not bar an action against the private party. *See Dykes v. Hoseman*, 743 F.2d 1488 (11th Cir. 1984). In *Dykes*, the court stated:

> The "color of state law" component of § 1983 may be satisfied by showing that an official act of a defendant judge was the product of a corrupt conspiracy involving the judge and other private parties.

*Id.* at 1494 (*citing Dennis v. Sparks*, 449 U.S. 24, 29, 101 S. Ct. 183, 186 (1980)).

The District Court's overly broad interpretation of the *Rooker-Feldman* doctrine, affirmed by the Fourth Circuit Court of Appeals, would clearly bar any federal action alleging a conspiracy between private parties and state judges and would therefore prevent meritorious claims of this nature, however rare, from being heard. This overly broad interpretation is also at odds with decisions by the Eleventh and Seventh Circuits. *Dykes; Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995). In *Nesses*, the plaintiff alleged a "tentacular conspiracy among the lawyers and the judges to engineer Nesses' defeat" in a series of prior state court proceedings. Nesses alleged in his federal suit that the lawyers for his opponent in the original suit for breach of contract used their political clout to turn the state judges against him. The plaintiff in *Nesses*, however, had previously sued the lawyers in state court based essentially on the same factual allegations regarding the corruption of the state court system.

Addressing the defendant's assertion of the *Rooker-Feldman* doctrine as a bar to Nesses' suit, the Seventh Circuit Court of Appeals noted the prevalence of confusion of the doctrine with res judicata. The *Rooker-Feldman* doctrine, the *Nesses* court stated, "ought to be confined to cases in which the defendant in the state court

is seeking to undo a remedial order of some sort ... [t]hat is unmistakably a collateral attack on the state court's judgment." 68 F.3d at 1004. Explaining the distinction between the doctrines of res judicata and *Rooker-Feldman*, the court stated as follows:

> When a plaintiff seeks to relitigate a suit that has been decided against him, he is not so much attacking as trying to bypass the judgment in that suit; and the doctrine that blocks him is res judicata. It blocks Nesses, who had previously sued the lawyers twice . . . for **the same wrongdoing**, and lost.

*Id.* (emphasis added). Prior to this federal action, the Petitioner had never brought any action alleging "the same wrongdoing." Neither the facts nor the legal theories raised in this federal action were ever raised in previous litigation. In fact, the Petitioner never discovered the conspiratorial facts until long after the conclusion of the state court proceedings.

In holding that the Petitioner's claims were nonetheless barred by *Rooker-Feldman*, the District Court rejected the Seventh Circuit's analysis, stating that "[t]his court, however, does not view the Rooker-Feldman doctrine so technically or narrowly." (A-19, n.3.) The Fourth Circuit Court of Appeals summarily affirmed the District Court's decision and its reasoning.

Unlike *Feldman*, the federal case before this Court raises completely separate issues and parties that/who were not before the Virginia Supreme Court when it made its decision. Furthermore, relief could be granted

to the Petitioner without disturbing the decision of the Virginia Supreme Court.[1] The holding of the Virginia Supreme Court in the state matter was that, despite contractual and statutory law to the contrary, communications and data produced during a mediation session were not privileged and could be introduced as evidence in a proceeding to enforce a purported settlement agreement. The issues in the Petitioner's federal action do not, in any way, require the federal court to revisit the state court decision. The Petitioner did not seek to have the state court judgment vacated because the judgment was in error; the Petitioner asked for relief because she was denied a fair hearing as a result of the alleged conspiracy.

As it now stands in the Fourth Circuit, a case with the same allegations as those in *Dennis* would be dismissed under the *Rooker-Feldman* doctrine. Further, the Fourth Circuit would have dismissed Nesses' (7th Circuit) claim even if Nesses had not previously litigated that claim in state court. The Petitioner, therefore, requests that this Court grant this Petition to resolve this conflict with this Court's decision and those of other circuit courts of appeals.

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[1]Although the Petitioner's Complaint asks for alternative relief, inter alia, in the form of vacating the decision of the Virginia Supreme Court, the Petitioner realizes that only this Court has authority to do so. *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 176-77, 118 S. Ct. 523, 535 (1997).

## III. THIS COURT SHOULD GRANT THIS PETITION TO VACATE A DECISION WHICH WILL HAVE A CHILLING EFFECT ON THE FILING OF CIVIL RIGHTS ACTIONS, WILL UNDERMINE PUBLIC CONFIDENCE IN THE JUDICIARY, AND WILL THREATEN JUDICIAL INDEPENDENCE.

Although this Court receives many petitions with outlandish allegations that are without merit, this case should be distinguished from the chaff of meritless petitions because it truly involves a grave misuse of the judicial process which threatens to undermine public confidence in the judiciary. This case presents a situation in which the lower courts were unable to police themselves to avoid misuse of judicial power. Such a situation invites legislation designed to curb judicial misconduct, but which may have the effect of eroding judicial independence.

The punishing of litigants and their counsel for bringing controversial or unpopular matters to the attention of the courts destroys the confidence of the public and attorneys in the integrity of the judicial system. In this case, the courts avoided addressing the controversial and unpopular issues which the Petitioner raises by prohibiting discovery and *sua sponte* turning a motion to dismiss hearing into a sanctions hearing without giving notice to the Petitioner and without giving the Petitioner an opportunity to be heard.

The Petitioner was not permitted to submit any evidence before the Memorandum Opinion dismissing

the suit and imposing sanctions was issued. Yet, the District Court made evidentiary "findings" on a motion under Fed. R. Civ. P. 12(b). The so-called evidence upon which the determination was based was not contained in any part of the record before the District Court.

The case was then transferred to another judge without a statutorily required Fourth Circuit Order. 28 U.S.C. §§ 292(b), 295.[2] This judge determined that the issue of whether sanctions should be imposed was already decided and that he only had authority to decide the amount of sanctions. Thus, the Petitioner was allowed to present such evidence as could be gathered without the aid of discovery only in a hearing which was effectively limited to deciding the amount of sanctions. No opinion was rendered based on that sanctions hearing until six years after the hearing had taken place.[3]

Although the District Court rendered a decision in 1996 which was, in part, based on a purported ethical violation,[4] the District Court did not report the violation

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[2]In fact, the required order was never issued/filed until six years later when the Petitioner filed an appeal. (Civil Docket entries 35, 36 dated August 8, 2002.)

[3]When this belated opinion was ultimately rendered, it contained several non-record and false findings of fact which were material to the amount of sanctions imposed.

[4]In its Memorandum Opinion, the District Court accused counsel for the Petitioner of filing the frivolous

to the Virginia State Bar (VSB) as required by local rules. The disciplinary division of the VSB, however, discovered the purported ethics violation through the media coverage related to the case. The disciplinary arm of the VSB then thoroughly investigated, inter alia, the imposition of sanctions under Rule 11 against counsel for the Petitioner. The VSB dismissed the ethics complaint "based upon [VSB] Council Rule of Disciplinary Procedure IV(B)(2)(b)(ii), which states that there is no credible evidence to support an allegation of misconduct." A panel of attorneys reviewed and analyzed the Memorandum Opinion imposing sanctions and the "record" (to the extent there was a record) and determined that there was "no credible evidence to support an allegation of misconduct" pursuant to Rule 11 or any other matter.

Noting the extraordinary length of time that had passed before the District Court order was issued, the Fourth Circuit stated that "we have reviewed the delay in entering orders imposing sanctions and costs, and although we find the delay lengthy and unexplained, we can ascertain no harm." (A-4.) The lengthy delay is but one of many examples of the court's failure to apply the rules applicable to all judicial proceedings and, instead, to treat this case as *sui generis* because it dared to question the impartiality of a member(s) of the judiciary.

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legal contentions "with the obvious purpose of injuring [Defendants'] reputations rather than redressing constitutional injury." (A-5.)

In ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the court is obliged to "accept the facts as alleged by the plaintiffs and construe them in the light most favorable to the plaintiffs." *Iodice v. United States*, 289 F.3d 270, 273 (4th Cir. 2002). In this case, however, the District Court knowingly deviated from this standard, repeatedly telling counsel for the Petitioner that "I am not asking you what you have alleged." (A-63, 65.)

Although the District Court states that it asked "counsel to articulate the complaint's factual underpinnings" at the Rule 12(b)(6) hearing (A-8), it gave counsel for the Petitioner no opportunity to present evidence except in response to what can only be characterized as the court's unusual and unexpected "cross-examination." (A-59-73.) In both the transcript (A-60, 66-69) and its Memorandum Opinion (A-10, 20, 21), the District Court makes it clear that it believed (without any record support) that the anonymous letter was "sent by the Plaintiff or someone acting with the Plaintiff." (A-66.) As previously stated, counsel for the Petitioner and the Petitioner herself denied any involvement in the anonymous letter and telephone calls. On the other hand, the Defendants refused to deny either the authenticity of the letter or the allegations in it. The letter itself indicated that the author was someone associated with the Defendants.

Although the Petitioner was not permitted to introduce a single document or any testimony during the hearing at which the decision to impose sanctions was initially made, the Complaint's allegations were the only facts arguably before the judge. When counsels for the Petitioner attempted to explain their due diligence

investigation, the court persistently interrupted, telling counsel to "give me the factual basis," and "answer my question." (A-59-73.) The court accused counsel of "dodging" or "ducking" the questions regarding the factual 'underpinnings.' (A-65, 73.) Although the hearing was noticed as a motion to dismiss, the court made it clear as soon as counsel for the Petitioner rose to speak that the court intended to impose sanctions. Counsels for the Petitioner were understandably shocked by the court's demeanor. Although the court asked if the Defendants "had anything further," the court did not provide the Petitioner with the same opportunity. (A-73.) Without permitting counsels for the Petitioner to introduce any evidence, the court concluded the hearing, stating that it would issue a memorandum opinion and that the court stands in recess. (A-74.)

As the Advisory Committee Notes to Rule 11 advise, "[t]he court is expected to avoid using the wisdom of hindsight and [ask] . . . what was reasonable to believe at the time the pleading . . . was submitted." Furthermore,

> the Rule requires a court to consider issues rooted in factual determinations. For example, to determine whether an attorney's prefiling inquiry was reasonable, a court **must consider all the circumstances of a case**. An inquiry that is unreasonable when an attorney has months to prepare a complaint may be reasonable when he has only a few days before the statute of limitations runs.

*Cooter & Gell*, 496 U.S. at 401-02, 110 S. Ct. at 2459 (emphasis added).

In this case, counsels for the Petitioner worked feverishly to investigate the underlying factual allegations of the Complaint. The investigation revealed that the justices of the Virginia Supreme Court had received an ex parte communication, concealed it, wrongly declared it confidential, mischaracterized it, and ultimately destroyed it **after** a copy was requested. There was absolutely no rebuttal to these facts. On the other hand, the Petitioner, the Petitioner's counsels, and everyone else involved with the Petitioner's side of the case denied having anything to do with the letter.

Before filing the Complaint, counsel for the Petitioner contacted the Defendants, but the Defendants refused to deny the authenticity of the letter or to even explain the circumstances related to their receipt of the letter. The Defendants effectively cut off all further ability to investigate the matter without formal discovery. Further, the statute of limitations on one of the Petitioner's causes of action was about to run, and the Petitioner and her counsel then had no choice but to file the Complaint or forever lose the right to have the state action heard and decided.

In *Cooter & Gell*, this Court held that Rule 11 must be viewed to give effect to the goal of deterrence, "[a]though the Rule must be read in light of concerns that it will spawn satellite litigation and chill vigorous advocacy." If this ruling is allowed to stand, there will likely not be a single attorney in the Fourth Circuit (after reviewing this case) who would ever take a case alleging

misconduct by a judge or other lawyer, no matter how meritorious the case.

Such a state of affairs would surely lower the already diminished faith of the public in the judiciary and the bar. When a sufficient number of the constituents of state and federal legislators share the perception that the judiciary and the bar is unaccountable, it is inevitable that these legislators will seek to impose some kind of control on a judicial system which apparently cannot control itself.

## CONCLUSION

For all of the foregoing reasons, the Petitioner, Georgia Anne Snyder-Falkinham, and her counsel, Joseph L. Anthony, request this Court to grant their Petition for a Writ of Certiorari.

Respectfully submitted,

Joseph L. Anthony, Pro Se, and

Georgia Anne Snyder-Falkinham

By: JOSEPH L. ANTHONY, ESQUIRE
Counsel of Record for
Petitioner
Stott & Anthony, P.C.
Suite 700
Liberty Trust Building
101 South Jefferson Street
Roanoke, Virginia 24011
(540) 345-7511

No. _____

# In The Supreme Court of the United States

GEORGIA ANNE SNYDER-FALKINHAM, ET AL.,

*Petitioners,*

v.

BRUCE C. STOCKBURGER, ET AL.,

*Respondents.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## APPENDIX

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**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

No. 02-1762

---

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff-Appellant,

versus

BRUCE C. STOCKBURGER; GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners; S.D. ROBERTS MOORE; WILLIAM R. RAKES; JAMES R. AUSTIN; CHARLES L. WILLIAMS, JR.; EUGENE E. DERRYBERRY; WILLIAM J. CREECH, JR.; JAMES C. JOYCE, JR.; LINDA DAVIS FRITH; W. DAVID PAXTON; W. WILLIAM GUST; GUY M. HARBERT, III; DAVID G. WEAVER; FRANK B. MILLER, III; SANDS, ANDERSON, MARKS AND MILLER, P.C., a Virginia Professional Corporation; WHARTON, ALDHIZER & WEAVER, a Virginia Professional Limited Liability Corporation; CHARLOTTE M. HODGES, Executor of the Estate of Ronald M. Hodges, deceased,

Defendants-Appellees,

and

RONALD D. HODGES,

Defendant.

No. 02-1763

In Re: JOSEPH L. ANTHONY,

Appellant.

GEORGIA ANN SNYDER-FALKINHAM,

Plaintiff,

versus

BRUCE C. STOCKBURGER; GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners; S.D. ROBERTS MOORE; WILLIAM R. RAKES; JAMES R. AUSTIN; CHARLES L. WILLIAMS, JR.; EUGENE E. DERRYBERRY; WILLIAM J. CREECH, JR.; JAMES C. JOYCE, JR.; LINDA DAVIS FRITH; W. DAVID PAXTON; W. WILLIAM GUST; GUY M. HARBERT, III; DAVID G. WEAVER; FRANK B. MILLER, III; SANDS, ANDERSON, MARKS AND MILLER, P.C., a Virginia Professional Corporation; WHARTON, ALDHIZER & WEAVER, a Virginia Professional Limited Liability Corporation; CHARLOTTE M. HODGES, Executor of the Estate of Ronald M. Hodges, deceased,

Defendants-Appellees,

and

RONALD D. HODGES,

Defendant.

Nos. 02-1762, 02-1763

Appeals from the United States District Court for the Western District of Virginia, at Roanoke. Samuel G. Wilson, Chief District Judge; William L. Osteen, District Judge, sitting by designation. (CA-96-83-7-R)

Submitted: Nov. 27, 2002 Decided: Dec. 18, 2002

Before MICHAEL, MOTZ, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Georgia Anne Snyder-Falkinham, Joseph L. Anthony, Appellants Pro Se. William W. Eskridge, PENN, STUART & ESKRIDGE, Abingdon, Virginia; J. Jonathan Schraub, McLean, Virginia; John Dickens Eure, James Ferrell Johnson, JOHNSON, AYERS & MATTHEWS, Roanoke, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c)

PER CURIAM:

Georgia Anne Snyder-Falkinham and Joseph L. Anthony appeal the district court's order dismissing Snyder-Falkinham's 42 U.S.C. § 1983 (2000) complaint, and the orders imposing sanctions and costs to the

Defendants.[1] We have reviewed the record and the district court's opinions and orders and find no reversible error. We have reviewed the delay in entering orders imposing sanctions and costs, and although we find the delay lengthy and unexplained, we can ascertain no harm. Accordingly, we affirm on the reasoning of the district court. *See Snyder-Falkinham v. Stockburger*, No. CA-96-83-7 R (W.D. Va. filed Jun. 7, 2002, entered Jun. 10, 2002; filed Aug. 29, 1996, entered Aug. 30, 1996). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

---

[1]To the extent that Anthony seeks to appeal the judgment in the § 1983 action, or the district court's factual findings underlying that judgment, he lacks standing to do so because he was not a party to the § 1983 action.

CLERKS OFFICE, U.S. DIST. CT.
AT ROANOKE, VA
FILED
AUG 05 1996
MORGAN E. SCOTT JR Clerk
By: L.C. Fox
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF VIRGINIA**
**ROANOKE DIVISION**

| | | |
|---|---|---|
| **GEORGIA ANNE SNYDER-FALKINHAM,** | ) | |
| | ) | **Civil Action No. 96-0083-R** |
| **Plaintiff,** | ) | |
| | ) | |
| **v.** | ) | |
| **BRUCE C. STOCKBURGER, et al.,** | ) | **Memorandum Opinion** |
| | ) | |
| **Defendants.** | ) | |

This is an action pursuant to 42 U.S.C. § 1983 by Georgia Anne Snyder-Falkinham (Ms. Snyder-Falkinham), a disgruntled plaintiff in an earlier state court case, against three law firms and various members of those firms, with the obvious purpose of injuring their reputations rather than redressing constitutional injury. The action is based on an alleged anonymous tip and has all the grace and charm of a drive-by shooting. The court dismisses the complaint and sanctions Ms. Snyder-Falkinham and her attorneys, Joseph L. Anthony and Michael E. Richardson.

## I.

Ms. Snyder-Falkinham brought a legal malpractice action in the Circuit Court for the City of Roanoke against her former attorney, Bruce E. Stockburger, several of his law partners, and his law firm, Gentry, Locke, Rakes & Moore (Gentry, Locke) alleging breach of fiduciary duties, professional negligence, and fraud and misrepresentation in handling her legal affairs. At Stockburger's request, the presiding judge referred the case for a dispute resolution session pursuant to Virginia's Dispute Resolution Program, Va. Code §§ 8.01-576.4 - 576.12. Ms. Snyder-Falkinham and her attorneys in the state court action, Thomas L. Rasnic and Roger E. Jenne, Stockburger and his attorney, Frank B. Miller, III of the Richmond, Virginia law firm Sands, Anderson, Marks & Miller, (Sands, Anderson) and the attorney for Gentry, Locke, Ronald D. Hodges of the Harrisonburg, Virginia law firm, Wharton, Aldhizer & Weaver, (Wharton, Aldhizer) appeared. Mediation partially resolved the case. Ms. Snyder-Falkinham agreed to waive her punitive damages claim, dismiss all individual parties except Stockburger, and waive any claim above the insurers' policy limits. In exchange, Gentry, Locke's insurer, which was defending under a reservation of rights, agreed to withdraw its reservation.

The day before trial, the attorneys for Ms. Snyder-Falkinham, Stockburger, and Gentry, Locke negotiated final settlement of all claims and on the morning of trial tendered a dismissal order signed by all counsel of record. The presiding judge dismissed the case with prejudice. Ms. Snyder-Falkinham refused to execute the

agreed upon settlement papers, however, and retained new counsel. The presiding judge then held a hearing to determine whether Ms. Snyder-Falkinham had authorized the settlement. After hearing sixteen witnesses, including Ms. Snyder-Falkinham, and reviewing numerous exhibits, the court found that, contrary to her testimony, Ms. Snyder-Falkinham had authorized the settlement. The court, accordingly, denied her motion to vacate the dismissal order. She then petitioned the Virginia Supreme Court for appeal. The Virginia Supreme Court granted her petition and affirmed by published opinion. *Snyder-Falkinham v. Stockburger*, 457 S.E.2d 36 (Va. 1995). The Virginia Supreme Court reached the obvious conclusion that "the record is replete with competent evidence to support the trial court's factual finding that the plaintiff orally agreed to a binding settlement." *Snyder-Falkinham*, 457 S.E.2d at 41.

Ms. Snyder-Falkinham filed the instant action against defendants Stockburger, Gentry, Locke, Ronald D. Hodges, Wharton, Altizer, Frank B. Miller, and Sands, Anderson. She alleges that the circuit court committed error in denying the motion to vacate and in permitting the introduction of confidential information in the circuit court proceeding, that defendants "misused" the confidential information, and that defendants improperly influenced the Virginia Supreme Court to "turn down the plaintiff's appeal in the Stockburger lawsuit." According to Ms. Snyder-Falkinham, defendants "conspired with the Virginia judges/Justices of the Virginia Supreme Court" causing them to "corruptly" decide her appeal. (Pl.'s

Compl. at 15.) She requests that this court award her damages, or:

> alternatively, that this court vacate the purported mediation agreement discussed in the January 25, 1994, dispute resolution proceeding and the subsequent agreements and orders based on the purported mediation agreement, including the Opinion rendered by the Virginia Supreme Court, and that this Court remand the causes of action alleged in the Stockburger Lawsuit to the Virginia trial court for a trial on the merits.

(Pl.'s Compl. at 16.)

The defendants moved to dismiss and moved for sanctions under Rule 11 of the Federal Rules of Civil Procedure. At the hearing on those motions, the court directed Ms. Snyder-Falkinham's counsel to articulate the complaint's factual underpinning and counsel's inquiry into the facts. Richardson, Ms. Snyder- Falkinham's co-counsel, responded that the complaint alleged that a Gentry, Locke partner, William E. Rakes, had spoken with Justice Richard H. Poff about the case and asked him "to turn down" Ms. Snyder-Falkinham's appeal. When pressed by the court, Richardson retracted the allegation.

Mr. Richardson: Your honor, we allege the specifics of what has been done.

The Court: What was said?

Mr. Richardson: That he asked them to turn down the appeal.

The Court: He asked them; them being who[m]?

Mr. Richardson: The Supreme Court members.

The Court: Which Supreme Court members?

Mr. Richardson: Well, Justice Poff, who is named specifically---

The Court: He specifically spoke with Justice Poff and asked Justice Poff to turn it down; is that what you are telling this court?

Mr. Richardson: Not at this time, Your Honor. Your Honor we have alleged---

The Court: I am not asking you what you have alleged. Is that what you are telling me?

Mr. Richardson: No, Your Honor.

The Court: Are you telling me that he had a conversation with Justice Poff and asked Justice Poff to turn it down; is that what you are representing here in open court?

Mr. Richardson: No, Your Honor.

(Hr'g Tr. at 17-18.)

When pressed further by the court about the factual basis for the suit, Richardson cited an *anonymous* letter that a "whistleblower" at the Virginia Supreme Court allegedly sent Ms. Snyder-Falkinham.[1] The unsigned, three-page, type-written letter, which was addressed and sent to the Justices of the Virginia Supreme Court, purported to be from the "grateful wife" of a member of the Gentry, Locke law firm and purported to thank the members of the Virginia Supreme Court for "refusing to hear the case." (Pl.'s Ex. 1 at 1.) The letter is a thinly veiled diatribe about the law firms involved, the Virginia Supreme Court, and the legal profession. Its content and unmistakable tenor reveal its purpose, if not its authorship:

> I agree that criticism of lawyers is an ever increasing pastime of the press and those who are not in some way connected with the legal profession. I was told that the strategy group from Gentry, Locke believed that the Bar association and the Supreme Court would do all they could to stop the criticism of lawyers, including not hearing this case--that there was an intense and concerted effort on your part to stop this lawyer bashing, and that denying this appeal would be a way to accomplish that objective.

---

[1]Ms. Synder-Falkingham attached the *anonymous* letter to her complaint as plaintiff's exhibit number one.

> Bruce and the firm have already agreed that they would pay Georgia Anne huge dollars (maybe even over a million dollars). Georgia Anne does not need this money and paying her any more would just be taking away more money from the families of the lawyers.

(Pl.'s Ex. 1 at 2.)

Ms. Snyder-Falkinham's counsel wrote the Virginia Supreme Court purporting to inquire about the letter, and the Clerk of the Virginia Supreme Court responded, in part:

> As the members recall, the letter was anonymous, and some who read it deemed it incomprehensible. No member gave it any consideration, and it had no influence upon the subsequent decision of any member of the Court in your client's appeal. Instead, the members threw their copies in the waste basket, deeming it to be another unsolicited writing often sent to the Justices by litigants, convicts, and others who are either pleased or displeased with a decision of the Court.
>
> I am further instructed to advise you that none of the members possesses a copy of the letter in any form nor is there a copy in any form in any of the Court's records. Finally, I am to advise you that this is all

> the Court will have to say on the subject, except to state, once and for all, that it considers the matter closed.

(Pl.'s Ex. 2.) According to Richardson, an *anonymous* person who Richardson surmised must have been employed at the Virginia Supreme Court, later sent a complete copy of the *anonymous* letter to Mr. Anthony, thereby proving that the Clerk of that court falsely replied that neither that court nor any of its members retained a copy.

Given the frivolous legal contentions and the lack of factual support, this court directed counsel to explain why Rule 11 sanctions should not be imposed. Richardson responded that he confronted Miller, one of the defendants, with the letter, and Miller only replied that the letter was "scandalous." Anthony, Richardson's co-counsel, responded that he had received three *anonymous* phone calls and that the *anonymous* caller told him in one of those calls that the Chief Justice of the Virginia Supreme Court "had more than twenty-five documented conversations with Bill Rakes related to [the] case." (Hr'g Tr. at 28.)

Defendants have submitted affidavits detailing their costs, expenses and attorney's fees. Neither Richardson nor Anthony has responded further.

## II.

United States District Courts are barred from hearing "challenges to state- court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in [the United States Supreme Court]." *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983). *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The bar extends not only to constitutional claims that were presented to or adjudicated by the state court but also to those that are "inextricably intertwined" with the state judgment. *Feldman*, 460 U.S. at 486-87. *See Guess v. Board of Medical Examiners of North Carolina*, 967 F.2d 998, 1004 (4th Cir. 1992); *Leonard v. Suthard*, 927 F.2d 168, 169-70 (4th Cir. 1991); *Czura v. Supreme Court of South Carolina*, 813 F.2d 644, 646 (4th Cir. 1987). Defendants maintain that this action is an unequivocal collateral attack on the state court decision and that this court should dismiss it. Ms. Snyder-Falkinham maintains that she is not attacking the state court decision, but rather that she is "seeking damages for the injury she suffered as a result of the conspiracy." (Pl.'s Reply to Def.'s Mot. to Dismiss at 16.) Under the circumstances of this case, the court finds the distinction to be without a difference and dismisses this suit.

This suit is, as defendants have labeled it, an unabashed assault on the state court decision as is clear from Ms. Snyder-Falkinham's complaint, reply brief, and the arguments of her counsel. For most of its seventeen pages, the complaint drones about alleged errors

committed by the state trial judge of which the following is but one, yet representative, example:

> The purported "Mediation Memorandum of Agreement" ("Mediation Agreement") ultimately determined by Judge Jennings on February 15, 1994, to be binding and enforceable is voidable, *inter alia*, because it was procured in violation of Plaintiff's civil rights and because Plaintiff is entitled to void the Mediation Agreement pursuant to § 8.01-576.12 of the 1950 Code of Virginia, as amended. Plaintiff is also entitled to void any purported subsequent agreements and/or orders based upon the enforceability and non-binding effect of the purported mediation Agreement. Pursuant to § 8.01-576.11 of the 1950 Code of Virginia, as amended, only mediation agreements which are in writing *and* executed by the parties/participants are binding and enforceable. The purported Mediation Agreement was not executed by the parties/participants and was not, therefore, binding and/or enforceable upon the parties. Defendants Stockburger, Austin, Miller, and Hodges, among others, as participants in the mediation session conducted on January 25, 1994, however, endeavored to and did take inappropriate actions and conspire with other[s] to procure a binding and otherwise enforceable mediation agreement, *inter alia*,

by the action described herein.

(Pl.'s Compl. at 10-11.)[2] The complaint concludes by

---

[2]The complaint also alleges in part that defendants:

> (a) continued to attempt to negotiate and settle the issues discussed in the purported Mediation Agreement after the mediation session on January 25, 1994; but represented/argued to Judge Jennings on February 15, 1994, that all issues covered in the purported Mediation Agreement were completely settled and agreed to on January 25, 1994;
>
> (b) discussed and transmitted a document(s), including a proposed draft order(s), to and from counsel for the other side in the Stockburger Lawsuit which attempted to settle the issues covered in the purported Mediation Agreement, without an agreement on these issues and without an acceptable and fully executed order on these issues to proffer to the Court for entry;
>
> (c) subpoenaed prior counsel for Plaintiff (i.e., attorneys Jenne and Rasnic) to testify at a hearing on February 15, 1994, knowing that any testimony from Plaintiff's prior counsel, without Plaintiff's informed consent, would be in violation of the attorney-client privilege and therefore not admissible;

(d) attached to Stockburger's Motion To Confirm Settlement the otherwise non-binding and unenforceable Mediation Agreement, knowing that the mediation Agreement was being "introduced" into evidence in blatant and knowing violation of the previously executed Consent Forms and the Virginia Statutes regarding the confidentiality of mediation proceedings, materials, and communications;

(e) inappropriately introduced testimony regarding confidential mediation materials and communications at the hearing on February 15, 1994, with the knowledge that such material and testimony was in breach of the Consent Forms and in violation of the Virginia Mediation Statutes;

(f) inappropriately introduced testimony at the hearing on February 15, 1995, regarding the authority of Plaintiff's prior counsel to act, with the knowledge that the purported mediation authority was inadmissible;

(g) intentionally refrained from filing a timely motion with the Supreme Court to challenge the adequacy of the Plaintiff's contemporaneous objection to the admissibility of mediation materials and communications, all in an inappropriate endeavor to ambush Plaintiff's then counsel on this issue during oral argument;

(h) inappropriately raised the inadequacy

of the Plaintiff's contemporaneous objection to the mediation material and communications for the first time in oral argument before the Virginia Supreme Court, all in an effort to wrongfully get the purported Mediation Agreement 'confirmed';

(i) wrongfully and fraudulently, *inter alia*, took other actions noted herein to procure a binding and enforceable mediation agreement on February 15, 1994, knowing that the purported Mediation Agreement was not enforceable;

(j) wrongfully and fraudulently concealed various documents and information, including drafts of releases and proposed orders, from Plaintiff, all in an attempt to wrongfully enforce an otherwise unenforceable mediation agreement;

(k) knowingly, wrongfully, and fraudulently used the mediation proceedings and their friendship/acquaintance with the Justices of the Virginia Supreme Court, *inter alia*, to 'sustain' the enforceability of an unsigned Mediation Agreement in an effort, *inter alia*, to deprive the Plaintiff of her civil rights;

(l) combined, conspired, and confederated with attorneys Jenne and Rasnic, among others, to knowingly illicit otherwise confidential attorney-client information from them in an inappropriate effort to advantage/protect attorneys Jenne and Rasnic and in an inappropriate effort to otherwise

requesting that this court "award damages" or "vacate" the opinion of the Virginia Supreme Court and "remand" the case to the "Virginia trial court for a trial on the merits." (Pl.'s Compl. at 16.) Since this suit is a challenge to the decision of the Virginia Supreme Court, therefore, or at best a challenge that is "inextricably intertwined"

---

procure an enforceable mediation agreement on February 15, 1994;

(m) combined, conspired, and confederated with attorneys Jenne and Rasnic, among others, to conceal certain drafts of unexecuted orders and/or releases to procure and sustain the enforceability of an otherwise unsigned and unenforceable mediation agreement; and

(n) wrongfully, inappropriately, and fraudulently concealed certain drafts of the Mutual Release And Settlement Agreement ("Mutual Release") with the knowledge that the production of the first (and other) drafts would confirm and prove that various provisions of the Mutual Release were being negotiated and agreed upon after the dismissal orders were entered by Judge Jennings on January 31, 1994, all in an effort to procure the enforcement of what Defendants knew to be an otherwise unenforceable mediation agreement and in an effort to deprive the Plaintiff of her civil rights.

with that court's decision, this court dismisses it.[3]

---

[3]Ms. Synder-Falkinham argues that this case is more closely analogous to *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995), than to cases that have applied the jurisdictional bar of *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) (the "*Rooker-Feldman* Doctrine"). *Nesses*, however, does not support the viability of this action. Rather, *Nesses* simply decides the method of dispatching suits like this one--res judicata or lack of jurisdiction. At the risk of over-simplifying the Seventh Circuit's erudite analysis, a short-hand test for determining whether the applicable bar is res judicata or jurisdictional is this: "[I]f the federal plaintiff was the plaintiff in state court, apply res judicata; if the federal plaintiff was the defendant in state court, apply *Rooker-Feldman*." *Garry v. Geils*, 82 F.3d 1362, 1367 (7th Cir. 1996). Applying that short-hand test, res judicata would bar Ms. Synder-Falkinham's suit. This court, however, does not view the *Rooker-Feldman* doctrine so technically or narrowly.

The United States District Court is a court of limited jurisdiction. The district court is not vested with jurisdiction to hear every alleged, conceived, or contrived claim of injustice, just those within its limited jurisdiction. The Virginia Supreme Court is Virginia's final arbiter of justice and its decisions are, with narrowly proscribed exceptions, subject to review by the United States Supreme Court alone. The *Rooker-Feldman* doctrine is a necessary component of our federalism. An unsuccessful, disgruntled plaintiff may not, therefore, simply repackage allegations, call them due process violations,

## III.

Federal court is not a safe haven to conduct legally and factually groundless litigation--litigation so devoid of merit that it is obviously conducted to harass and embarrass. Ms. Snyder-Falkinham complains of due process violations. She claims that something was taken from her without procedural fairness. Yet, she had a host of lawyers representing her, the patient ear of a state court trial judge who heard sixteen witnesses before deciding that Ms. Snyder-Falkinham had settled her state claims, and an appeal heard and decided by seven honorable justices who published their decision. In contrast, Ms. Snyder-Falkinham and her new counsel have accused her adversaries and their former counsel, her former counsel, the trial judge who heard her case, and the Chief Justice, a senior justice, and each of the six associate justices of the Virginia Supreme Court with "corruptly" conspiring against her--and this she and her counsel have done without one scintilla of evidence. Rule 11 was designed to deter precisely this kind of conduct.

Rule 11 requires that an attorney conduct an objectively "reasonable investigation of the factual and legal basis for his claim before filing." *Brubaker v. City of Richmond*, 943 F.2d 1363, 1373 (4th Cir. 1991). This suit, however, is legally groundless. The court does not have jurisdiction to hear Ms. Snyder-Falkinham's case or to grant the relief she requests. This suit is also factually groundless. The *anonymous* letter that Ms. Snyder-

---

allege complicity with the state's highest court, and thereby gain access to the United States District Court.

Falkinham alleges spawned the litigation is no effort to thank anybody for anything. It is a diatribe intended to embarrass. Its asserted anonymity gives Ms. Snyder-Falkinham no cover. Nor do the phone calls allegedly made to counsel. Uncorroborated, fanciful assertions of an allegedly anonymous tipster do not replace informed judgment based upon reasonable inquiry. Anonymity "facilitates wrong by eliminating accountability, which is ordinarily the very purpose of the anonymity." *McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511, 1537 (1995) (Scalia, J., dissenting). Ms. Snyder-Falkinham and her counsel have suggested nothing to the court that indicates that the anonymity here does anything other than facilitates wrong.

The court has determined that it will sanction Ms. Snyder-Falkinham, Anthony and Richardson by requiring them to pay some or all of defendants costs, expenses, and attorney's fees. In determining the appropriate sanction, four factors will guide the court's inquiry: (1) the reasonableness of the defendants' attorney's fees; (2) the minimum sanction needed to deter the conduct; (3) the ability of Ms. Snyder-Falkinham, Anthony and Richardson to pay; and (4) the severity of the Rule 11 violation. *See Brubaker v. City of Richmond*, 943 F.2d 1363, 1374 (4th Cir. 1991). The court has already decided the fourth factor--this is not a technical violation of Rule 11. The parties will be permitted to address further the first three factors.

## IV.

For the reasons stated, the court will dismiss this action for lack of jurisdiction and sanction Ms. Snyder-Falkinham, Anthony and Richardson. The parties are directed to submit such additional written materials as they desire pertaining to the three remaining *Brubaker* factors within ten days.

ENTER this 2d day of August, 1996.

A TRUE COPY, TESTE:
MORGAN E. SCOTT, JR., CLERK
BY: S/_____
DEPUTY CLERK

S/ Sam Wilson
UNITED STATES DISTRICT COURT

CLERK'S OFFICE, U.S. DIST. CT.
AT ROANOKE, VA
FILED
AUG 29 1996
MORGAN E. SCOTT, JR., Clerk
By: S. Moody
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF VIRGINIA**
**ROANOKE DIVISION**

| | | |
|---|---|---|
| **GEORGIA ANNE SNYDER-FALKINHAM,** | ) | |
| **Plaintiff,** | ) | |
| **v.** | ) | **Civil Action No. 96-0083-R** |
| **BRUCE C. STOCKBURGER, et al.,** | ) | |
| **Defendants.** | ) | |

## ORDER

The undersigned has been designated by the Chief Judge of the United States Court of Appeals for the Fourth Circuit to accept the assignment and responsibility for ruling on the Rule 11 sanctions against Plaintiff Georgia Anne Snyder-Falkinham and each of her attorneys, Joseph L. Anthony and Michael E. Richardson.

received aug 30 1996

By memorandum opinion, August 5, 1996, The Honorable Sam Wilson, United States District Judge, found that sanctions were appropriate. The court then allowed ten (10) days for the sanctioned persons to present any written submissions addressing the factors under *Brubaker v. City of Richmond*, 943 F.2d 1363, 1374 (4th Cir. 1991) for determination of the appropriate amount of sanctions. No submissions were made.

IT IS THEREFORE ORDERED that this matter shall be set for hearing on September 23, 1996, at 10:00 a.m., at the United States District Courthouse, Roanoke, Virginia.

IT IS FURTHER ORDERED that each of the parties subject to sanctions will have the opportunity to present evidence and argument for the appropriate amount of monetary sanctions.

IT IS FURTHER ORDERED that any adverse parties may but are not required to present evidence of costs incurred in addressing the matters for which sanctions are to be imposed.

This the 29th day of August, 1996.

s/
United States District Judge

A TRUE COPY, TESTE:
MORGAN E. SCOTT, JR., CLERK
BY: s/
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ENTERED
6-10-02

CLERK'S OFFICE U.S. DIST COURT
AT ROANOKE, VA
FILED
JUN 07 2002
JOHN F. CORCORAN, CLERK
BY: S/
DEPUTY CLERK

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

BRUCE C. STOCKBURGER and GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners, S.D. ROBERTS MOORE, WILLIAM R. RAKES, JAMES R. AUSTIN, CHARLES L. WILLIAMS, JR., EUGENE E. DERRYBERRY, WILLIAM J. CREECH, JR., JAMES C. JOYCE, JR., LINDA DAVIS FRITH, W. DAVID PAXTON, W. WILLIAM GUST, GUY M. HARBERT, III, and DAVID G. WEAVER,

and

Civil Action No.
96-0083-R

FRANK B. MILLER, III, and )
SANDS, ANDERSON, MARKS )
and MILLER, a Virginia )
Professional Corporation, )
)
and )
)
CHARLOTTE M. HODGES, )
Executor of the Estate of Ronald )
D. Hodges, deceased, and )
WHARTON, ALDHIZER & )
WEAVER, a Virginia Professional)
Limited Liability Company, )
)
Defendants. )

ORDER and JUDGMENT

OSTEEN, District Judge

The Plaintiff Georgia Anne Snyder-Falkinham has filed a document entitled PROTECTIVE MOTION TO RECONSIDER, REHEAR, VACATE, AMEND, CERTIFY, EXTEND, AND/OR STAY. This court has reviewed the motion and finds nothing new contained therein which has not been thoroughly reviewed and considered first by Chief Judge Samuel Wilson and then by the undersigned court.

For the reasons stated in Judge Wilson's Memorandum Opinion filed August 5, 1996, the motion should be denied.

IT IS THEREFORE ORDERED that the motion filed by Plaintiff should be and is hereby denied.

IT IS FURTHER ORDERED that all other pending motions are rendered moot.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this proceeding shall be and is hereby dismissed subject only to the imposition of certain attorney fees as is set forth in an order of even date herewith.

This the 7th day of June 2002.

s/_____
United States District Judge

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK
BY: s/_____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ENTERED
6-10-02

CLERK'S OFFICE U.S. DIST COURT
AT ROANOKE, VA
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JUN 07 2002
JOHN F. CORCORAN, CLERK
BY: S/
DEPUTY CLERK

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

BRUCE C. STOCKBURGER and GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners, S.D. ROBERTS MOORE, WILLIAM R. RAKES, JAMES R. AUSTIN, CHARLES L. WILLIAMS, JR., EUGENE E. DERRYBERRY, WILLIAM J. CREECH, JR., JAMES C. JOYCE, JR., LINDA DAVIS FRITH, W. DAVID PAXTON, W. WILLIAM GUST, GUY M. HARBERT, III, and DAVID G. WEAVER,

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Civil Action No. 96-0083-R

FRANK B. MILLER, III, and )
SANDS, ANDERSON, MARKS )
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Executor of the Estate of Ronald )
D. Hodges, deceased, and )
WHARTON, ALDHIZER & )
WEAVER, a Virginia Professional)
Limited Liability Company, )
)
Defendants. )

ORDER

OSTEEN, District Judge

For reasons set forth in the Memorandum Opinion of August 5, 1996, the Honorable Samuel Wilson, now Chief Judge for the Western District of Virginia, dismissed the complaint filed herein for lack of jurisdiction. Chief Judge Wilson further directed that sanctions against Plaintiff Georgia Anne Snyder-Falkinham and her attorneys, Joseph L. Anthony and Michael E. Richardson, should be imposed. He granted to the parties to be sanctioned 10 days to submit any written materials they wished for the court to consider under the so-called *Brubaker* factors for determination of appropriate sanctions. No submissions were made except a letter from attorney Michael E. Richardson,

which addressed itself somewhat to the *Brubaker* factors,[1] but also addressed itself to accusing Judge Wilson of being disrespectful, prejudgmental, and injecting his personal beliefs into the litigation. In that letter, Mr. Richardson did acknowledge that he had reviewed the reasonableness of Defendants' requests for attorneys' fees and objected to payment for services other than that for the Rule 12(b)6 motion. This court agrees with that observation.

The next move by Plaintiff was to file a document entitled Protective Motion to Reconsider, Rehear, Vacate, Amend, Certify, Extend, and/or Stay. That matter will be dealt with in a separate order of this court. However, it is appropriate to note that the document, in summary, accuses the court of aggressive hostility, creation of conflict, visceral reaction, among other characterizations. There was generally a rehash of Plaintiff's counsel's argument at the original hearing.

Judge Wilson decided to withdraw from the determination of appropriate sanctions and this court was designated to hear the matter. The first order signed by this court directed that a hearing be held to determine appropriate sanctions against Plaintiff Georgia Anne Snyder-Falkinham and each of her attorneys, Joseph L. Anthony and Michael E. Richardson. In that order, the parties to be sanctioned were cautioned that they had

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[1]Michael E. Richardson did file a letter in response to Judge Wilson's invitation but retracted that portion responsive to his ability to pay sanctions at the September 23, 1996, hearing. (Tr. at 250.)

filed no submissions for determination of the appropriate amount of sanctions.

At the hearing, in which all parties signified readiness to proceed, each of the parties to be sanctioned was given an opportunity to address the factors set forth in *Brubaker v. City of Richmond*, 943 F.2d 1363, 1374 (4th Cir. 1991). Each of the attorneys subject to sanctions testified at length. The Plaintiff testified briefly. Even after the court indicated that the parties to be sanctioned should address their financial ability to pay, that subject was never presented. Finally, the court directed that in absence of evidence to the contrary, the court would consider that each of the parties was financially able to respond to whatever amount of monetary sanctions the court may deem appropriate. The parties responded with silence.

## The Sanctionable Conduct

In this proceeding, attorneys Anthony and Richardson filed for their client a complaint against three law firms, together with individual members of those law firms. The Title 42 U.S.C. § 1983 action alleged that those law firms had conspired with each other and with all of the members of the Supreme Court of Virginia to deny justice to Plaintiff in her State of Virginia proceeding entitled *Snyder-Falkinham v. Stockburger, et al*, CL. 91-1212, Circuit Court of the City of Roanoke. The allegations of conspiratorial conduct included, but were not limited to, such accusations in the state court proceeding and appeal, summarized as follows:

1. The trial judge allowed improper testimony and material;

2. The opposing attorneys induced Plaintiff's attorneys to violate professional and contractual obligations;

3. Plaintiff's former attorneys violated professional and ethical obligations owed to their client;

4. The defendant law firms released confidential matters in violation of the Virginia Code;

5. The trial judge improperly used the confidential matters against Plaintiff;

6. On Plaintiff's appeal, the Supreme Court of Virginia "incredibly" (the complaint's characterization) refused to hear significant issues;

7. The Supreme Court of Virginia made a totally arbitrary decision not to hear the appeal;

8. Defendant attorneys improperly influenced the Supreme Court of Virginia to deny Plaintiff's appeal;

9. The Justices of the Virginia Supreme Court declined and refused to submit for

inspection ex parte letters which letters influenced the Justices to rule against Plaintiff;

10. Defendant law firms influenced the Supreme Court of Virginia by ex parte and highly improper fashion;

11. Defendant law firms defrauded Plaintiff;

12. Defendant law firms fraudulently used mediation and friendship/acquaintance with Justices of the Virginia Supreme Court;

13. The Justices of the Virginia Supreme Court employed improper material to circumvent real issues;

14. The Supreme Court of Virginia corruptly issued a denial of Plaintiff's motion;

15. The Justices of the Supreme Court of Virginia and others subverted the judicial process.

The harsh and incredible allegations are unsupported by even a scintilla of competent evidence. Plaintiff offered three anonymous telephone calls and one anonymous letter as justification for her allegations. On the question of appropriate sanctions, this court heard essentially the same evidence that Judge Wilson heard before he issued his memorandum opinion dismissing

Plaintiff's action. This court finds evidence to support and, therefore, concurs in Judge Wilson's opinion.

Determination of Sanctions

The guidelines for appropriate imposition of sanctions are found in Rule 11(c), Federal Rules of Civil Procedure:

> Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

It is clear that the prime purpose of a sanction is to deter similar conduct. Such priority does not rule out compensation to opposing parties but simply relegates it to a secondary position. *See* Rule 11(c) (2), Fed. R. Civ. P.

*Brubaker, supra,* set forth four factors to guide this court's inquiry. The court should consider "(1) the reasonableness of opposing party's attorney fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation." The Advisory Committee Notes to the 1993 Rule 11 amendment enunciate those same factors and additional factors: (1) whether the conduct was willful or negligent;

(2) whether it is part of a pattern of activity or isolated; (3) whether it infected the entire proceeding; (4) whether the person has engaged in similar conduct; (5) whether it was intended to injure; and (6) whether the offender is trained in the law.

1. Reasonableness of Opposing Parties' Attorney Fees. The court has reviewed the submitted attorney fee applications which appropriately exclude the time and expenses in connection with the presentation of the request for imposition of sanctions. Those fees will be dealt with more particularly in connection with the disposition of this action in response to Plaintiff's motion to set the dismissal aside and in Defendants' motion for fees in representing the prevailing party in the 1983 action.

2. The Minimum to Deter. Parallel to and as a part of the minimum sanction necessary to deter similar conduct in the future by the offending parties and to deter others is the factor of ability to pay. Since that factor appears to be unlimited, the court must address other specifics for a determination. The court finds no evidence as to whether Plaintiff individually directed or insisted upon the filing of the complaint with the sanctionable allegations. While it could be argued that a lay person or a litigant pro se should be able to realize the egregious allegations are unsupported by competent evidence, it does appear that the lawyers were responsible for the instigation of such an unfounded attack. Because the lawyers were so involved in drafting, certifying, filing, and pursuing this frivolous litigation, the participation of Plaintiff pales in comparison to that

of her lawyers. In addition, Plaintiff will bear the costs assessed with the dismissal of this action.

3. The Ability to Pay. The parties subject to sanction made no written submission on their ability to pay. The court specifically mentioned this factor in the order of August 5, 1996, and at a hearing on September 23, 1996. The parties subject to sanction maintained silence. Thus, this court will proceed on the basis that each party to be sanctioned has the financial means to make any monetary payment imposed as a sanction without personal economic harm to that person.

4. The Severity of the Rule 11 Violations. There is no evidence except that Mr. Richardson is a partner in a well-respected Tennessee law firm. There is no evidence of prior similar acts. His testimony, however, clearly implicates him in the decision to file the complaint, even by his own admission, naming as defendants a person and law firm against whom there was not a scintilla of evidence. Mr. Richardson did travel from Tennessee to Virginia to meet with one of the defendant lawyers prior to filing the complaint.

Mr. Anthony, on the other hand, has some difficulty. He has, on a previous occasion, been prohibited from filing motions in the case of *First Security Bank v. First Security Bank South* (No. 91-0275-R), a case arising in the Western District of Virginia. Judge Jackson Kiser found Anthony's attempt to file to be in direct contravention of the court's order. Additionally, Mr. Anthony has in other proceedings accused two judges, one state judge and one federal judge, of bias and

inability to understand decisions. The accusations arose in cases in which Mr. Anthony was disqualified as counsel.

Richardson has, in the present case, written to the court after a hearing before Judge Wilson, "[you] clearly made up your mind before the May 6, 1996 hearing." Richardson stated that he was offended by the way Judge Wilson treated Mr. Anthony and Mr. Richardson and by the total lack of respect the judge has for Plaintiff. Richardson went so far as to accuse Judge Wilson of injecting his personal beliefs into litigation over which he presides. These actions by both Anthony and Richardson are indicative of a failure to maintain appropriate professionalism required in our system of jurisprudence.

Focusing on the egregious conduct in the present proceeding in which there was joint and collective action, these attorneys have accused each Justice of the Supreme Court of Virginia, a trial judge, Plaintiff's original attorneys, as well as opposing attorneys, with conspiracy to denigrate the judicial system for the Commonwealth of Virginia. After Judge Wilson's Order of August 5, 1996, Anthony and Richardson filed a Protective Motion to Reconsider, Rehear, Vacate, Amend, Certify, Extend, and/or Stay, which was no more than a rehash of previously stated positions. The diatribe against Judge Wilson accused him of hostility, expressing disdain, openly and unprofessionally attacking Plaintiff and her representative, and practicing law from the bench, among other accusations too numerous and repetitive to necessitate recounting here.

All of these individual and collective actions of Anthony and Richardson are indicative of the need for substantial sanctions. Such conduct is abhorrent to our system of justice and cannot be tolerated. By way of mitigation, this court opines that the purveyors of such sanctionable conduct generally find their missiles boomerang.

The court finds that the amount of substantial attorneys' fees to be assessed by separate order under 42 U.S.C. § 1988 should have sufficient deterrent effect as to Plaintiff. The court further finds that sanctions in the sum of Seventy-Five Hundred Dollars ($7,500.00) are minimally sufficient as to Michael E. Richardson and sanctions in the sum of Fourteen Thousand Dollars ($14,000.00) are minimally sufficient as to Joseph L. Anthony for the necessary deterrent effect.

IT IS THEREFORE ORDERED that Michael E. Richardson shall be sanctioned in the amount of Seventy-Five Hundred Dollars ($7,500.00). Payment of Thirty-Seven Hundred Fifty Dollars ($3,750.00) shall be made to the Clerk, United States District Court for the Western District of Virginia, on or before October 2, 2002. The remaining Thirty-Seven Hundred Fifty Dollars ($3,750.00) shall be due and payable only before Michael E. Richardson may file or participate in any other litigation in his professional capacity in the United States District Court for the Western District of Virginia.

IT IS FURTHER ORDERED that Joseph L. Anthony shall be sanctioned in the amount of Fourteen Thousand Dollars ($14,000.00). Payment of Eleven

Thousand Dollars ($11,000.00) shall be made to the Clerk, United States District Court for the Western District of Virginia, on or before October 2, 2002. The remaining Three Thousand Dollars ($3,000.00) shall be due and payable only before Joseph L. Anthony may file or participate in any other litigation in his professional capacity in the United States District Court for the Western District of Virginia.

IT IS FURTHER ORDERED that Plaintiff Georgia Anne Snyder-Falkinham shall not be assessed any monetary sanctions in deference to the attorney fees which shall be ordered by the court under 42 U.S.C. § 1988.

This the 7th day of June 2002.

s/
United States District Judge

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK
BY: s/
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ENTERED
6-10-02

CLERK'S OFFICE U.S. DIST COURT
AT ROANOKE, VA
FILED
JUN 07 2002
JOHN F. CORCORAN, CLERK
BY: S/
DEPUTY CLERK

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

BRUCE C. STOCKBURGER and GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners, S.D. ROBERTS MOORE, WILLIAM R. RAKES, JAMES R. AUSTIN, CHARLES L. WILLIAMS, JR., EUGENE E. DERRYBERRY, WILLIAM J. CREECH, JR., JAMES C. JOYCE, JR., LINDA DAVIS FRITH, W. DAVID PAXTON, W. WILLIAM GUST, GUY M. HARBERT, III, and DAVID G. WEAVER,

and

Civil Action No. 96-0083-R

FRANK B. MILLER, III, and )
SANDS, ANDERSON, MARKS &)
MILLER, a Virginia Professional )
Corporation, )
)
and )
)
CHARLOTTE M. HODGES, )
Executor of the Estate of Ronald )
D. Hodges, deceased, and )
WHARTON, ALDHIZER & )
WEAVER, a Virginia Professional)
Limited Liability Company, )
)
Defendants. )

ORDER

OSTEEN, District Judge

Each of the prevailing parties has filed documents seeking reimbursement of attorney fees as authorized under 42 U.S.C. § 1988 (b) at the termination of this proceeding.

The Defendants are three individual lawyers together with the entire law firm of which the individual is a member. Each of the individual lawyers and his individual law firm is represented by outside counsel.

The defendants, Bruce C. Stockburger and his law firm, Gentry, Locke, Rakes & Moore, are represented by William W. Eskridge, hereafter referred to as

"Stockburger Attorney." The defendants, Frank B. Miller, III and his law firm, Sands, Anderson, Marks & Miller, are represented by J. Jonathan Schraub and Danny M. Howell, hereafter referred to as "Miller Attorneys." The defendants, Charlotte M. Hodges, Executor of the Estate of Ronald D. Hodges, deceased, and the law firm Wharton, Aldhizer & Weaver, are represented by James F. Johnson, hereafter referred to as "Hodges Attorney."

All submissions for attorney fees have been reviewed by the court and cannot be categorized as excessive. They can be justified within the terms of their own submission. It is clear that there is quite a range in attorney fees expended when compared to each other submission. It is also clear that attorney fees for parties compiled in seeking sanctions should not be considered.

The Miller Attorneys have invited the court to consider a lodestar calculation rather than reasonable historical billing rates. The court will decline the invitation for a lodestar calculation would serve no useful purpose in this proceeding.

The court finds that after deducting Rule 11 attorney fees and deducting the expenses, the Stockburger Attorney fees in the amount of Ten Thousand Eight Hundred Eighty-Two Dollars are reasonable and appropriate.

The court finds that after deducting the Rule 11 attorney fees, deducting the expenses, and after reducing the attorney fees, for some consistency, the "Miller

Attorney" fees in the amount of Eighteen Thousand Dollars are reasonable and appropriate.

The court finds that after deducting Rule 11 attorney fees, deducting the expenses, and reducing the attorney fees, for some consistency, the "Hodges Attorney" fees in the amount of Seventeen Thousand Three Hundred Dollars are reasonable and appropriate.

IT IS THEREFORE ORDERED that Plaintiff Georgia Anne Snyder-Falkinham shall be assessed reasonable attorney fees and the prevailing parties shall recover as part of their costs attorney fees as provided in 42 U.S.C. § 1988.

IT IS FURTHER ORDERED that Bruce C. Stockburger and the law firm of Gentry, Locke, Rakes & Moore shall have and recover attorney fees in the amount of Ten Thousand Eight Hundred Eighty-Two Dollars ($10,882.00).

IT IS FURTHER ORDERED that Frank B. Miller, III and the law firm of Sands, Anderson, Marks & Miller shall have and recover Eighteen Thousand Dollars ($18,000.000).

IT IS FURTHER ORDERED that Charlotte M. Hodges, Executor of the Estate of Donald D. Hodges, deceased, and the law firm of Wharton, Aldhizer & Weaver shall have and recover attorney fees in the amount of Seventeen Thousand Three Hundred Dollars ($17,300.00).

This the 7th day of June 2002.

s/
United States District Judge

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK
BY: s/
DEPUTY CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
January 29, 2003

No. 02-1762
CA-96-83-7-R

GEORGIA ANNE SNYDER-FALKINHAM

Plaintiff-Appellant

v.

BRUCE C. STOCKBURGER; GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners; S.D. ROBERTS MOORE; WILLIAM R. RAKES; JAMES R. AUSTIN; CHARLES L. WILLIAMS, JR.; EUGENE E. DERRYBERRY; WILLIAM J. CREECH, JR.; JAMES C. JOYCE, JR.; LINDA DAVIS FRITH; W. DAVID PAXTON; W. WILLIAM GUST; GUY M. HARBERT, III; DAVID G. WEAVER; FRANK B. MILLER, III; SANDS, ANDERSON, MARKS AND MILLER, P.C., a Virginia Professional Corporation; WHARTON, ALDHIZER & WEAVER, a Virginia Professional Limited Liability Corporation; CHARLOTTE M. HODGES, Executor of the Estate of Ronald M. Hodges, deceased

Defendants-Appellees

and

RONALD D. HODGES

Defendant

---

On Petition for Rehearing and Rehearing En Banc

---

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
January 29, 2003

No. 02-1763
CA-96-83-7-R

In Re: JOSEPH L. ANTHONY
Appellant

---

GEORGIA ANNE SNYDER-FALKINHAM
Plaintiff

v.

BRUCE C. STOCKBURGER; GENTRY, LOCKE, RAKES & MOORE, a Virginia General Partnership, and its individual partners; S.D. ROBERTS MOORE; WILLIAM R. RAKES; JAMES R. AUSTIN; CHARLES L. WILLIAMS, JR.; EUGENE E. DERRYBERRY; WILLIAM J. CREECH, JR.; JAMES C. JOYCE, JR.; LINDA DAVIS FRITH; W. DAVID PAXTON; W. WILLIAM GUST; GUY M. HARBERT, III; DAVID G. WEAVER; FRANK B. MILLER, III; SANDS, ANDERSON, MARKS AND MILLER, P.C., a Virginia Professional Corporation; WHARTON, ALDHIZER & WEAVER, a Virginia Professional Limited Liability Corporation; CHARLOTTE M. HODGES, Executor of the Estate of Ronald M. Hodges, deceased
Defendants-Appellees

and

RONALD D. HODGES
Defendant

---

On Petition for Rehearing and Rehearing En Banc

---

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

| | | |
|---|---|---|
| GEORGIA ANNE SNYDER-FALKINHAM, | : | |
| Plaintiff | : | |
| -vs- | : | CIVIL ACTION No.: 96-0083-R |
| BRUCE C. STOCKBURGER, et al., | : | |
| Defendants | : | |

MAY 6, 1996

HEARD BEFORE:

THE HONORABLE SAMUEL G. WILSON

---

APPEARANCES

JOSEPH L. ANTHONY, ESQ.
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and
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and
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Johnson, Ayers & Matthews
Post Office Box 2200
Roanoke, Virginia 24009

Counsel on behalf of the Defendants

********

The following cause came on to be heard on this the 6th day of May, 1996, before the Honorable Samuel G. Wilson, sitting in Roanoke, Virginia, when the following Proceedings were had:

THE HONORABLE SAMUEL G. WILSON: Please call the next case.

THE CLERK: Georgia Anne Snyder-Falkinham versus Bruce C. Stockburger, et al., Civil Action Number 96-0083-R.

THE COURT: Is the Plaintiff ready to proceed?

MR. RICHARDSON: We are, Your Honor.

THE COURT: Are the Defendants ready to proceed?

MR. ESKRIDGE: Yes, Your Honor.

MR. SCHRAUB: Yes, Your Honor.

MR. JOHNSON: Yes, Your Honor.

THE COURT: Let's see, we are here on the motion of Defendants; so you all can begin.

MR. ESKRIDGE: If it please the Court, I am Bill Eskridge from Abingdon. I represent the law firm of Gentry, Locke, Rakes & Moore, its individual partners, and Bill Creech, who is a former partner in that firm, was a partner at the time of some of the acts alleged in the complaint, not at the time of other acts alleged in the complaint.

This case is pending on motions to dismiss filed by all of the Defendants. The motions are for lack of jurisdiction in this Court and failure to state a claim upon which relief can be granted, and, for the most part, they rise or fall together.

The motion to dismiss for lack of jurisdiction takes the position that the complaint is based on 42 USC, Section 1983, which the Court is very familiar with. The complaint, in an attempt to show a State action, alleges that in the hearing conducted by Judge designate Barnard Jennings, that the Defendants, through their Counsel, attempted to introduce improper evidence, consisting of evidence that was privileged or confidential, things that were said and done during a mediation conference. That supposedly is State action by the Defendants and their Counsel, and, secondly, it alleges in an attempt to allege State action, it attempts to allege a conspiracy between the Defendants and the Virginia Supreme Court.

Let me take those allegations of State action in turn, and the attempt to introduce improper evidence before Judge Jennings, I think that falls on its own weight here. There is abundant case law on it, that private actors do not act under color of State law when introducing or attempting to introduce evidence in a State judicial proceeding. They don't address this in their brief, but it is in the complaint, and they can address it in argument, but, to me, it is certainly a frivolous allegation.

The more serious allegation, and the one which they spend most of the time in the complaint, is an allegation that the Defendants conspired with the Virginia Supreme Court to arrange for the outcome of the case.

In that regard, there are a couple of points that need to be made. One is that in this type of case where there is an allegation of a conspiracy between a private

person and a judicial system, that the normal rules of testing a 12(b)(6) motion do not apply. The normal rules that all inferences are to be weighed in favor of the Plaintiff and that unless the Plaintiff can educe no facts, conceivably - - - Those rules are out the window, because the case law established that there is a heightened pleading requirement in these types of cases, and the Plaintiff, in her brief, acknowledges that the case law establishes a heightened pleading requirement.

The complaint in this case absolutely does not come anywhere close to alleging a conspiracy between the Defendants and the Virginia Supreme Court. A conspiracy is an agreement. You have got to have an agreement to allege a conspiracy, and that is particularly important in this case because it is the agreement by the State actor, using the color of State law requirement that the case law requires for 1983 jurisdiction.

So strict to the conclusions, the case law says that all the conclusions don't matter; you have to look at the facts that are alleged. Nowhere in this complaint is there any allegation of a fact that any Justice or Justices of the Supreme Court ever agreed with anyone to do anything, and that is fatal to this complaint.

I am sure the Court has read the complaint and the letter that is attached to it and the briefs filed by parties' Counsel for both sides, and the Court is familiar with the letter, the so-called grateful ripe letter that is attached to the complaint, on which the complaint is largely based. This is an anonymous letter written by someone who

claims to be inextricably intertwined with the litigation as the writer puts it.

Let's assume for purposes of discussion that that letter can be authenticated, that it can be shown to have been written, the author can be identified, that it can be shown to have been written by someone with knowledge of the facts, knowledge of what he or she spoke of, and let's incorporate that letter by reference into the complaint. Does that letter, even giving them all of those assumptions, does that letter allege a conspiracy? It does not. Given yet all of those assumptions, in that most alleges that the Defendants made improper ex parte overtures to the Virginia Supreme Court. The real issue in this case ought to be not whether the motions to dismiss are granted, but whether the Plaintiff should be given any leave to amend, to re-plead, to attempt to state a better case for a conspiracy, to allege more facts to say there was a conspiracy.

I hope I am not being presumptuous with the Court in talking about leave to amend before the Court has ruled on the basic motions, but I think it is an important inquiry, because in their brief the Plaintiff says that if our motions are granted, then they want leave to amend.

Let me point out that we are not dealing with a pro se Plaintiff. We are dealing with a sophisticated businesswoman who is represented not by one law firm, but by two law firms; one from Chattanooga, Tennessee, and one from Roanoke, Virginia.

The inadequacy of the complaint that we are talking about is not failure to comply with some pleading requirement, some matter of forum. It is simply the failure to allege facts sufficient to state a cause of action.

It was incumbent on the Plaintiff in smearing the reputations of the Defendants, in smearing the integrity of the Justice and Justices of the Virginia Supreme Court, to give it her best shot, to put whatever facts she had in this complaint, and if there is any thought being given by the Court of a leave to amend, the Plaintiff's Attorney should be required to state in open Court today what facts it is that they have to back up these scandalous allegations that they would like to insert in an amended complaint and the briefs. I will be glad to try to answer any questions that the Court may have, but I am sure you have read the complaint and the briefs.

THE COURT: I have.

MR. ESKRIDGE: Thank you, sir.

MR. SCHRAUB: Good morning, Your Honor. My name is Jonathan Schraub, and I represent Frank B. Miller, III, and Sands, Anderson, Marks & Miller. Briefly, Your Honor, I apologize for prior to last week regarding the continuance, but it turned out to be unnecessary. I apologize; I didn't know what else to do at the time, but to at least make the request.

Your Honor, I adopt what Mr. Eskridge said, and I don't intend to repeat it. I would like, however, to emphasize just a couple of points to the Court. First of all,

Your Honor, we believe the complaint is so palpably frivolous as to be sanctionable, and we filed a request with respect to that. It is an assault not only on the Defendants in this case, but on the State Judicial System in Virginia, and, frankly, it is a waste of this Court's time.

The only thing that is truly unusual about this case is that it was not filed pro se, that it was filed with the aid and assistance and the signature of a member of the Bar of this Court, and a member of the Bar of another Court. What is more, Your Honor, after we filed our State Bar for sanctions with the Plaintiffs, and after we filed our brief, when you read the brief of the Plaintiffs in this case, they don't discuss the relevant cases. They simply refer to their brief, nowhere discusses Burnett versus Brown, which is a case that is virtually indistinguishable from this case in terms of its triviality, and what the Court in the Western District of North Carolina decided to do. The Plaintiffs don't discuss Sales versus Murray, which is the case in this district, Your Honor, which points to the need if you are going to have a 1983 allegation to show that there was an agreement, a meeting of the minds; otherwise, you have no conspiracy to give you the color of State action.

They don't discuss Grimm versus Carico, which is the Fourth Circuit case that adopts, as other Fourth Circuit cases, the Feldman doctrine, which indicates that this Court has no jurisdiction, where there is an inextricable intertwining of the State proceeding with the Federal proceeding.

The only case they do cite, Your Honor, that is intended to give the Court some comfort with respect to what they are allegedly trying to do is Dykes versus Hoseman, out of the Eleventh Circuit, and if anybody even gives a passing glance, which I am not sure the Plaintiff has done in Dykes versus Hoseman, the facts in that case are so utterly distinguishable as to reinforce the palpable triviality of this case.

In Dykes the Judge who was alleged to have conspired was the father of the - - - It was a child custody dispute, and the Judge who was alleged to have conspired was the father of the father of the child, and he was alleged to have been, and there was direct evidence that he set in motion a plan to arrange a hearing whereby his son would obtain custody of the child. If you have those facts, yes, the Judge may not be immune from suit, but, as the Eleventh Circuit then pointed out in Collins versus Walden later on, another case not discussed or distinguished by the Plaintiffs, at 835 F.2d, 961, you have to distinguish Dykes from a case where there is, as they say, no evidence of conspiratorial agreement of any motive on the part of the alleged conspirators which would justify incurring the existence of such an agreement.

Your Honor, you cannot sue respective members of this Court and the Judge of the Supreme Court based upon an anonymous letter and no evidence of jurisdiction, no evidence of proximate cause, res judicata, et cetera. We ask the Court to dismiss the matter and entertain our sanctions motion.

MR. JOHNSON: If Your Honor, please, I will take, on behalf of the Defendants Ronald D. Hodges and Warton, Altizer & Weaver, only a minute of the Court's time. The complaint, Your Honor, breaks down into, basically, two separate causes or claims for relief. The first being it is an outright effort to re-litigate the underlying State Court proceedings.

At Page 16 of the complaint in her prayer, Paragraph C, the Plaintiff brazingly asks this Court to vacate the action of the State Court, including the opinion rendered by the Virginia Supreme Court, and to remand this case to the Circuit Court for further proceedings.

The Court, of course, has no jurisdiction to do that, and the res judicata principles would bar that even if the Court did have jurisdiction. So what we are left with is a purported 1983 claim which is based upon an anonymous letter, which is to say it is based upon nothing, because an anonymous letter cannot be evidence in this case. It could never be authenticated. The Plaintiff has absolutely no facts with that anonymous letter relegated to the sidelines as it must be.

All that we are left with is the bare allegation of a conspiracy with the Supreme Court of Virginia.

Your Honor, I would like to leave with only one further point, which is that under the Feldman decision rendered by the United States Supreme Court, this Court is not empowered to address a 1983 claim if that claim is inextricably intertwined with the merits of the State Court actions. It clearly is, Your Honor, from a very

simple causation analysis. Unless the actions of the Circuit Court of the City of Roanoke and of the Virginia Supreme Court were erroneous, then the Plaintiff has suffered no harm, however much we might indulge her fanciful allegations of a conspiracy with the Supreme Court of Virginia. So that at the very foundation of her claim is a request that this Court find those actions to be erroneous, which the Court is not empowered to do. Thank you, Your Honor.

MR. RICHARDSON: May it please the Court, Judge Wilson, I am Mike Richardson from Chattanooga, Counsel for Georgia Anne Snyder-Falkinham in this case. We are before Your Honor today solely on 12(b)(6) motions, all of which motions should be denied.

The complaint more than sufficiently sets forth and pleads a cause of action under 42 USC 1983.

THE COURT: Well, surely, you don't maintain this Court has jurisdiction to do some of the things you are asking me to do in there, like remand to the Circuit Court.

MR. RICHARDSON: Your Honor, that is an alternative prayer for relief.

THE COURT: Well, it is an alternative prayer for relief, but it is an affront against everything involving federalism I can think of.

MR. RICHARDSON: Your Honor, that is a second issue. The real issue is whether there was undue influence

asserted upon the Virginia Supreme Court which caused - - -

THE COURT: From that letter?

MR. RICHARDSON: Not just from that letter, but from other - - -

THE COURT: Your letter, that is the substance of why you brought this thing?

MR. RICHARDSON: No, Your Honor; we allege other ex parte communications. On Paragraph 16 of our complaint - - - Let me explain the sequence of what happened. This anonymous letter is not the only proof we allege.

THE COURT: This anonymous letter isn't proof of anything, is it?

MR. RICHARDSON: It was an indication that communications had gone on.

THE COURT: What this letter indicates to me, I mean anybody can read this letter and figure out pretty quickly that this letter wasn't sent by anybody that had anything to do with the Defendants, not as a matter of communication. It was sent to harass; it is obvious, it is clear. All you have to do is read it; I mean you can read between the lines. It seems designed to embarrass; it doesn't seem designed to communicate.

MR. RICHARDSON: Your Honor, we allege in the complaint, Paragraph 16, that there were other improper ex parte communications had prior to this letter. The letter simply brought to our attention for the first time that these communications had been had. Your Honor, in - - -

THE COURT: So are you telling me that this Court sits to hear, if there has been an ex parte communication with a State Circuit Judge, that I have anything to do with that? What business is that of mine?

MR. RICHARDSON: We allege that as a result of ex parte communications and undue influence asserted upon the Supreme Court by these Defendant Lawyers, the Supreme Court issued an opinion it otherwise would not have. We allege causation; in Paragraph 18 we allege this opinion was corruptly issued as a result of undue influence asserted upon the Supreme Court by these Defendant Lawyers. We are not limiting ourselves to this letter, Your Honor. The letter simply brought to the Plaintiff's attention what had been going on.

We allege in Paragraph 16 that other ex parte communications had been had. Those have not been denied under oath. They simply come in and file dilatory motions saying, "Please don't believe this," but we are not here on summary judgment. They have not submitted sworn affidavits saying, "Judge, we didn't communicate. We didn't exert influence. We didn't call in markers. We didn't ask for favors." They don't say that. They simply say, "Don't take jurisdiction over this because they don't state a cause of action."

Under Sparks versus Dennis, a U. S. Supreme Court decision - - -

THE COURT: What is your particular allegation under the heightened pleading rule? I mean when you call into question the integrity of the Supreme Court of Virginia, what have you stated in your pleading? What is it that happened?

MR. RICHARDSON: We allege that improper ex parte communications have taken place.

THE COURT: What ex parte communications?

MR. RICHARDSON: We allege that Bill Rakes had been talking to the Supreme Court Justice - - -

THE COURT: You allege it; on what date and to whom?

MR. RICHARDSON: We do not set forth specific dates, Your Honor.

THE COURT: Why not?

MR. RICHARDSON: We still have notice of pleading I thought in Federal Court, and - - -

THE COURT: You have a heightened pleading rule here.

MR. RICHARDSON: Your Honor, we allege the specifics of what has been done.

THE COURT: What was said?

MR. RICHARDSON: That he asked them to turn down the appeal.

THE COURT: He asked them; them being who?

MR. RICHARDSON: The Supreme Court members.

THE COURT: Which Supreme Court members?

MR. RICHARDSON: Well, Justice Poff, who is named specifically - - -

THE COURT: He specifically spoke to Justice Poff and asked Justice Poff to turn it down; is that what you are telling this Court?

MR. RICHARDSON: Not at this time, Your Honor. Your Honor, we have alleged - - -

THE COURT: I am not asking you what you have alleged. Is that what you are telling me?

MR. RICHARDSON: No, Your Honor.

THE COURT: Are you telling me that he had a conversation with Justice Poff and asked Justice Poff to turn it down; is that what you are representing here in open Court?

MR. RICHARDSON: No, Your Honor.

THE COURT: Then what are you alleging?

MR. RICHARDSON: We allege that communications were brought to the Plaintiff's attention. In Paragraph 16, we allege that prior to receipt of this letter, a person who worked at the Supreme Court contacted the Plaintiff and brought to her attention that these ex parte communications had been going on. After that time, a portion of the letter was produced to the Plaintiff, and then a series of letters were written to the Supreme Court by Mr. Anthony requesting the letter, and the Supreme Court writes back and says, "We have destroyed every copy of that letter." Lo and behold, then, and only then is the letter produced by this same person who, apparently, works at the Supreme Court.

If this letter is so sensational and such a mockery of justice - - - Your Honor, I don't take these charges lightly. The former Chief Justice of the Tennessee Supreme Court, Ray Brock, has practiced with me since he retired from the Supreme Court bench in Tennessee eight years ago, and I respect the integrity of the judiciary. I do not bring these charges lightly, but when confronted with this, the Supreme Court writes back and says, "We have destroyed every copy of the letter," but then, lo and behold, someone sends it out.

THE COURT: Who is that someone that sent it out?

MR. RICHARDSON: I do not know.

THE COURT: Well, how do you know it was someone from the Supreme Court?

MR. RICHARDSON: We allege it was someone from - - -

THE COURT: I am not asking you what you allege. How do you know?

MR. RICHARDSON: It is my understanding that was what was told to the Plaintiff by this unidentified person; someone called up - - -

THE COURT: So let me get this straight. You have attacked the integrity of the Supreme Court of Virginia based on something that you don't even have any foundation and fact that you can disclose to this Court here right now?

MR. RICHARDSON: No, Your Honor. We - - -

THE COURT: What is the factual basis for your attacking the integrity of the Supreme Court of Virginia? I want to know what it is.

MR. RICHARDSON: They denied having this letter. If this letter is so sensational, and the allegations are sensational, why would - - -

THE COURT: You are dodging the question. What is your factual support supporting; where is it?

MR. RICHARDSON: It is contained in that letter and the inferences to be drawn therefrom.

THE COURT: So you are saying this letter is at the heart of all of this, an anonymous letter that we don't even know was sent, who sent it?

MR. RICHARDSON: It certainly prompted this, Your Honor. It brought to the Plaintiff's attention that communications had been going on.

THE COURT: Who, essentially, expounded on the anonymous letter?

MR. RICHARDSON: The Supreme Court received it. They then later say, "We don't have it any more." Now, how suspicious is that, Your Honor. If this letter is so sensational, why would they not disclose it to the litigants? The letter itself is in violation of a Court Order because it discloses that the Supreme Court Justices' monetary amount - - -

THE COURT: Well, how do we know that this letter wasn't sent by the Plaintiff or someone acting with the Plaintiff? You have suggested the Defendant. I have read this letter. This seems to be the kind of thing that is not intended to communicate, but to harass.

MR. RICHARDSON: Well, Your Honor, in that case, why didn't the Supreme Court disclose this letter to the litigants? Why did they try to cover it up?

THE COURT: It looks like a circular file kind of document to me. It looks like the kind of thing that came into the Court that somebody should put in the trash can immediately.

MR. RICHARDSON: Your Honor, as I said, among other things, it violates a prior Court Order relative to the confidentiality underlying monetary settlement. If this letter - - -

THE COURT: Who is violating it?

MR. RICHARDSON: The sender of that letter.

THE COURT: Well, who was the sender of that letter?

MR. RICHARDSON: Well, we allege, and the letter itself says - - -

THE COURT: Again, it is what you allege. Who is the sender of the letter? Does it always come back to what you allege?

MR. RICHARDSON: Your Honor, we are here on a 12(b)(6) motion.

THE COURT: There is a truth finding function of this Court, and when you sign a pleading under Rule 11, it goes beyond just simply your allegations.

MR. RICHARDSON: Well, Your Honor, I went beyond what is - - - I personally went to Richmond to

meet with some of these Defendant Lawyers to confront them with this letter, and this is outside the record. We seem to be going outside the record. When I started to present this letter to one of the Defendant Lawyers, before I even showed it to him, he blurted out, "That letter is scandalous." I said, "Have you seen this letter before," and he goes, "Yes." "When did you see it?" "Well, I refuse to answer that." "Under what circumstances did you get this letter?" "I refuse to answer that." I did my due diligence. I confronted them; I looked them in the eye and I asked them to deny it. They never denied it. To the contrary, they said, "We have seen it before." Well, how else could they have seen it before, Your Honor.

THE COURT: Well, I have seen it as an Exhibit to this case, and it is exactly as they described it; it is scandalous.

MR. RICHARDSON: If it was so scandalous, why would the Supreme Court not bring it to the litigants' attention? Why would they simply throw it away and then later on claim no copies exist?

THE COURT: It surely seems like to me the kind of thing that would be sent by someone who was not balanced.

MR. RICHARDSON: Your Honor, it identifies itself as being someone associated with the Defendants in that lawsuit.

THE COURT: I know how it identifies itself, but I am very suspicious after reading it, because its effort is not to communicate.

MR. RICHARDSON: Its purported effort is to thank the Justices for doing what they had done.

THE COURT: Yes, it is not trying to thank anybody for anything. Anybody can read that letter, a first grader could read that letter and know that there is no effort there to thank anybody. The effort is to embarrass somebody.

MR. RICHARDSON: In that case, Your Honor, why did the Supreme Court throw the letter away and not call somebody on the carpet? Why didn't they call the litigants and demand an explanation as to - - -

THE COURT: As to who sent this anonymous letter?

MR. RICHARDSON: And floating around these allegations, that these Defendant Lawyers were calling in favors.

THE COURT: All right, Counsel, I think the thing that you need to do is you need to tell me why sanctions should not be imposed against you personally and your co-Counsel in this case. That is what you need to tell me right now. You had better explain it and you had better be clear about it.

MR. RICHARDSON: Well, your Honor, as part of my due diligence in order to make a reasonable inquiry into the underlying facts, as I said, I travelled to Richmond, Virginia to meet, with among others, Mr. Miller. I wanted to look him in the eye and confront him with this letter. He never denied the letter. He never denied the authenticity of the letter. He never denied the facts and circumstances alleged therein. Rather, as I just stated, before I could even show him the letter, he blurted out, "I have seen that letter before, and it is scandalous." I said, "How would you have seen this letter before? I thought copies had been destroyed by the Virginia Supreme Court." He said, "I am not going to answer that question." Now, how else am I supposed to react when I am confronted with such a letter, and I go and I confront the man who is identified in here, and, rather than offer me any explanation, he never denies it. He says, "I have seen it before," but now he is not going to tell me how or when he saw it. I view that as putting them on notice that, "Come clean. Tell me it is not true." They have never done that. No one has ever denied the authenticity of that letter. They simply say, "Judge, it is scandalous. You can't possibly believe this." I went up there and I looked him in the eye and I said, "Tell me; deny it." I wrote him a follow-up letter saying, "If I misinterpreted that, tell me; deny it." They have never denied it.

THE COURT: That is your due diligence?

MR. RICHARDSON: Yes, Your Honor; I think if you give a Defendant or a particular Defendant a chance to deny it and they don't, but, to the contrary, acknowledge knowing about the underlying facts and

then they won't tell you how they obtained such knowledge, I think that is due diligence. Your Honor, in light of your direction to us, do you want to hear from Mr. Anthony in light of your question about why we should not be sanctioned, because he is - - -

THE COURT: I will be more than glad to hear from either one of you.

MR. ANTHONY: Your Honor, I am Joe Anthony. It offends me that the Court is not concerned about the - - -

THE COURT: About allegations - - -

MR. ANTHONY: About the allegations in the complaint. Otherwise, as Nesse says, otherwise, there would be no remedy, Federal remedy for - - -

THE COURT: Give me the factual basis, tell me the factual basis for those allegations in the complaint.

MR. ANTHONY: I received a phone call. I received a phone call. We are here on a 12(b) (6) motion.

THE COURT: Answer my question, Counsel.

MR. ANTHONY: And that question is?

THE COURT: The factual basis for the allegations in the complaint.

MR. ANTHONY: I received an anonymous phone

call that said there had been ex parte communications between the - - -

THE COURT: An anonymous phone call?

MR. ANTHONY: Yes, sir, and I was Counsel for the Plaintiff at that time. I could not ignore it. I wrote a letter to the Supreme Court identifying that, wrote a letter to the Clerk of the Supreme Court, wrote a letter to the Counsel for Georgia Anne Snyder-Falkinham in that case, and asked them if there was any other obligation I had to report this.

THE COURT: So on an anonymous phone call you brought this lawsuit?

MR. ANTHONY: On an anonymous phone call, plus numerous requests from the Supreme Court to get any communications about this fact. Now, what happened, all of the facts leading up to this case lead to the factual background of the due diligence to do this. Why would the Supreme Court, for example, ignore Rule 1:4, which requires that a motion be made timely before a motion to dismiss is - - -

THE COURT: We are not going to re-litigate the way the Virginia Supreme Court handled this case.

MR. ANTHONY: We are not re-litigating. Our actions, the only thing that has to be litigated is whether we were injured in that prior State Court action.

THE COURT: My question, I have asked you and

everybody - - - Your co-Counsel has ducked it. I want to know what the factual basis is that supports this lawsuit; I want to know.

MR. ANTHONY: So I wrote another letter to the Virginia Supreme Court.

THE COURT: So your letter to the Virginia Supreme Court, you have got a letter and you have an anonymous phone call. What is your factual basis?

MR. ANTHONY: I have gotten three anonymous phone calls. One of those anonymous phone calls identified Chief Justice Carico had had more than 25 documented contacts with Bill Rakes related to this case. I put that in a letter to the Virginia Supreme Court, asking them to respond to it. There are no less than ten letters going back and forth identifying the legitimate - - - the communications between that law firm and the Virginia Supreme Court. So there is plenty of factual basis and due diligence for that complaint. That complaint establishes and alleges a 1983 action, regardless of how offensive it is to me that we have Attorneys that would do that, that would do what has been alleged in there and is alleged in the complaint.

THE COURT: Anything further from the Defendants?

MR. ESKRIDGE: No, sir, Your Honor.

THE COURT: Have the Defendants moved for their cost expenses and Attorney's fees in this case?

MR. SCHRAUB: Yes, Your Honor, we have a pending sanctions Rule 11 motion before the Court.

MR. ESKRIDGE: They are different motions, but each through the Defendant has filed his own motion.

THE COURT: Have you articulated what your costs and expenses are?

MR. ESKRIDGE: No, sir, Your Honor.

MR. JOHNSON: No, Your Honor.

MR. ESKRIDGE: Under the time table under the Federal Rules, we have to serve this on them first before it is filed, and they have time to respond, and it was subsequently filed, but we didn't know until today what our costs and expenses would be.

MR. SCHRAUB: We would be pleased to submit affidavits to that effect, or whatever manner of proof the Court desires.

MR. ESKRIDGE: Yes, sir.

THE COURT: I will issue a memorandum opinion and order in this case. This Court stands in recess.

(Thereupon, the Proceedings were concluded.)

# CERTIFICATE

COMMONWEALTH OF VIRGINIA

COUNTY OF ROANOKE

I, Janice F. Hambrick, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing Proceedings were transcribed by me, after having been electronically recorded at the time and place in the foregoing caption specified, and that the foregoing is a true and correct transcript, to the best of my ability, of those Proceedings as aforesaid.

I further certify that I am not a relative, counsel, or Attorney for either party, or otherwise interested in the outcome of this action.

Given under my hand on this the 9th day of May, 1996.

s/ *Janice F. Hambrick*
JANICE F. HAMBRICK
Notary Public

My commission expires April 30, 2000.